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# INSANE AND HOMESTEAD BILLS—CLAYTON AMENDMENT.

## VIEWS

OF

# RICHARD BRODHEAD,

EXPRESSED IN THE SENATE OF THE UNITED STATES.

July 5, 1854.

The Senate having resumed the consideration of the President's Message vetoing the Indigent Insane Bill—

Mr. BRODHEAD said:

Mr. PRESIDENT: This is a proper occasion to consider the insane and the homestead bills. I propose to say a few words in regard to both; my main object, however, being to assign the reasons for the vote I intend to give against the one last named. The message of the President, refusing his sanction to the insane bill, brings it before us for reconsideration. Some of his reasons, if good against the one, are equally conclusive, in my opinion, against the other. Upon this point, however, there is much dispute among his friends, not only in this body, but elsewhere. In view of this fact, if I wished to embarrass him, and could so far disregard my duty as to desire to do so on a great measure of this kind, I would vote for the homestead bill, and send it to him either to be signed or vetoed. But, sir, I am governed by no such motive. I consider the positions taken by the President against the insane bill impregnable, and his reasoning unanswerable; and I will endeavor to show that some of them commit against the homestead bill. But whether they do or not, I think I can show good cause for the vote I intend to give against it when it comes up.

The following grant of power is found in the fourth article of the Constitution:

"The Congress shall have power to *dispose* of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States."

This clause when considered alone would certainly seem to confer upon Congress absolute and unqualified jurisdiction over the public lands, but in order to comply with a sound rule of construction, it must be considered in connection with other grants and restrictive clauses in the same instrument. Under it Congress passed the bill now about to be reconsidered, granting ten millions of acres of the public lands (not to be sold for less than \$10,000,000) for the support of the indigent insane in the several States, and to be divided among the several States in proportion to size and representation. The proceeds of the sales of the said lands to be managed in pursuance of the terms of the grant by State authority.

Under the clause of the Constitution which I have just cited, the advocates of this bill contend that Congress has the same power to grant or give away, or "*dispose*" of the public lands, that a man owning a farm in fee simple, would have, and hence that Congress has a right to grant the public lands for the benefit of the insane poor in the States. I cannot concur in opinion with them. The Federal and State governments seldom, if ever, have concurrent jurisdiction on any subject. The Federal Government is one of granted powers, and all power not granted is retained by the States. Now, it will not be contended that the States have not power to make provision for the support of the insane poor, or the poor not insane, or the poor orphan, and hence for the Federal Government to attempt to do it, would be a violation of State sovereignty and a reversal of the great leading and fundamental idea upon which the Federal Government is founded, to wit: the independence and the sovereignty of the States. A private owner of land is under no restraint as to alienation. A father may dispose of his land so as to do great injustice to his wife and children. Partiality or caprice may control him. But Congress has no such power over the public lands when the whole scope and meaning of the Constitution is considered. It is a trustee for the people of all the States, controlled by the restrictions and limitations of the Constitution. For example, the Constitution says, "Congress shall make no law respecting an establishment of religion," and therefore Congress could not dispose of the public lands for the benefit of any particular church or denomination of Christians. Congress cannot order the public lands to be sold and the proceeds to be paid to the different States for the purpose of paying the judges and governors thereof.

In addition to the authorities cited by the President in support of the strict construction and State-rights doctrine upon which he bases his objections to this bill, I beg leave to read brief extracts from the proceedings of the conventions of some of the States called for the purpose of ratifying the Constitution for the purpose of showing how much power was granted, and how much retained by the States. The great objection to the Constitution was, that it conferred too much power on the General Government, and therefore it was



ratified with a sort of *Protestando*, and an amendment was afterwards adopted in accordance with, and almost in the language suggested by the State conventions.

#### *Massachusetts.*

"And as it is the opinion of this convention that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of this Commonwealth, and more effectually guard against an undue administration of the Federal Government, the convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution :

"*First.* That it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution, are reserved to the several States, to be by them exercised."

#### *South Carolina.*

"This convention doth also declare, that no section or paragraph of the said Constitution warrants a construction that the States do not retain every power not expressly relinquished by them, and vested in the General Government of the Union."

#### *New Hampshire.*

"*First.* That it be explicitly declared that all powers not expressly and particularly delegated by the aforesaid Constitution, are reserved to the several States, to be by them exercised."

#### *Virginia.*

"*First.* That each State in the Union shall respectively retain every power, jurisdiction and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the Federal Government."

#### *North Carolina.*

"*First.* That each State in the Union shall, respectively, retain every power, jurisdiction and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the Federal Government."

#### *Amendment afterwards adopted.*

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

But, Mr. President, as I do not wish to repeat the arguments of the President and Senators who have preceded me in opposition to this bill, I will conclude by saying, that I thank the President for resisting one of the evil tendencies of the times, I mean the tendency to consolidation. This Government seems to be fast becoming one vast, consolidated empire—the Executive having more power and patronage than was ever dreamed of by the framers of the Constitution. The States seem to be fast becoming mere corporations, depending upon the Federal Government for support. There being a large surplus in the Treasury, obtained by indirect taxation through custom-house duties, Congress is constantly besieged to overstep its legitimate powers. To this surplus treasury is added a surplus quantity of land. It seems almost impossible to resist those who come here to capture the public Treasury, or to appropriate to themselves the public lands. The restrictions and limitations of the Constitution seem to be of no avail when ambition prompts or interest leads the way. Wherever there is money and power, there seems to be a disposition to use the one and abuse the other. Notwithstanding the general and great purpose of the Union was to protect us against foreign invasion, domestic commotions, and insurrections, and to regulate our intercourse with foreign nations, we are asked to attend to the business of the States, by aiding in the construction of railroads, the support of the poor and insane, &c. State politics and politicians are made subordinate to Federal power, although the reverse was intended. My opinion is, and I

have before expressed it to the Senate, together with some of the views which I have just advanced, that if discord among the States, rebellion, and anarchy, shall ever destroy this fair land, it will be because this Government has assumed powers not granted by the Constitution. With these remarks, I press forward to the execution of my main purpose, which is to assign my reasons against the homestead bill, which has not yet been much discussed, and which I consider much more objectionable than the one now before the Senate.

#### HOMESTEAD BILL.

The first section provides that any free white person, whether the head of a family or not, and who is a *citizen of the United States*, shall have, free of cost, one quarter section (one hundred and sixty acres) of land. The sixth section enlarges the operation a little, and extends the privilege to foreigners *now* resident in the United States, and who have filed their declaration of intention to become citizens; but it says they shall not have a patent for the land until they become citizens under our naturalization laws. And why should its benefits be confined to aliens *now* in the United States? Are not those who intend to come as good as those who are now here? Why give land, designed for the use of man, to those who come this year, and not to those who come next? And why withhold a patent from aliens until they have been five years in the country, and complied with our naturalization laws. Many of the advocates of this bill refused to support, with me, the Clayton amendment to the Nebraska bill, which withheld the right to vote from aliens until they had complied with our naturalization laws, and become citizens. So that they are willing to give aliens, not citizens, the right to take part in elections and govern—for the right to vote is the *right to govern*—and yet will refuse them the means wherewith to live. Sir, in view of many considerations, I would much rather give them land as soon as they arrive in the country, than I would the right to vote before they have complied with our naturalization laws and become citizens, as was done in the Nebraska bill. Several Democratic papers in Pennsylvania, of abolition proclivities, attempted to raise a hue and cry against me for sustaining the Clayton amendment, and congratulated the country upon its defeat; but, in so doing, they only followed the example of two Senators, [CHASE and SEWARD,] who are so much distinguished for their advocacy of abolition doctrines. Immediately after the defeat of the Clayton amendment, the honorable Senator from Ohio [Mr. CHASE] said:

"The rejection of the [Clayton] amendment, upon which we have just voted, is a great triumph of principle, *not the less valuable because coerced* from its opponents by a necessity to which they have yielded so reluctantly."

Upon the same occasion, the distinguished Senator from New York [Mr. SEWARD] taunted those who had voted for the amendment in about the same style, and informed the Senate that he had, a day or two previous, met twelve thousand foreigners, who had just arrived in one day in the country, and were on their way to take possession of the new Territories. The truth is, the yielding of the Clayton amendment was a concession to the spirit of abolitionism, in violation of the spirit of the Constitution, and nothing more.

The second section provides that the person desiring one hundred and sixty acres of land, shall



make an affidavit before the register of the land office; and at the end of five years he must prove, by two witnesses, before the same officer, that he has cultivated the same for five years, and has not alienated the same, &c. So that the register of the land office is made a kind of judicial officer. The door to perjury is opened wide; for a man's title depends upon his own affidavit, and that of two of his friends; and a large business is provided for lawyers in the shape of litigation.

The third section provides that the register shall note the applications on the tract books, &c.; and the fourth section says, that the land "shall, in no event, become liable for the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor," thus making a kind of bankrupt law for the new States, and not for the old ones, contrary to the clause in the eighth section of the Constitution, which says: "Congress shall have power to establish uniform laws upon the subject of bankruptcies throughout the United States." What right has Congress to say that a man's land within a State shall not be liable for his debts? In the Nebraska bill we established the non-intervention rule, even in the Territories.

The last section which is material confines the entries to be made on each alternate quarter section "*as near as may be practicable*," &c. Upon this I will comment before I conclude, and show that it is of no benefit whatever, and might as well be out, so far as any practical benefit may result to the Government. The section was placed in the bill for the purpose of enabling its advocates to say that it would not diminish the receipts from the sales. But the quarter sections retained are not doubled in price, as in the case of railroad grants; and I will hereafter show that the section is a mere pretext to avoid an objection to the bill.

There are some considerations, Mr. President, that would induce me to favor this bill. Some of my esteemed colleagues in the House think it a good one, and have urged its passage with great zeal and ability. The Whig and Democratic conventions, which recently assembled in my State, passed resolutions in favor of it; but, believing, as I do, that it is a bill subversive of principle, and injurious to my State, I feel bound, by a stern sense of duty, to oppose it to the utmost of my ability. The resolutions to which I have just alluded may be regarded by some as amounting to instructions to my colleague and myself; but I do not so consider them. I have a proper regard for enlightened popular opinion, but do not think conventions and State Legislatures always its true exponent. I claim to know something about the wishes of the people myself, and especially of the old-line-strict-construction Democrats. The Whig party in Pennsylvania are not in the habit of sanctioning what the Democrats call strict-construction views, and hence, perhaps, their support of the bill.

The State is entitled not only to my industry, but to my judgment. I give it upon this occasion against the bill, notwithstanding the resolutions of the two conventions. The conventions and the Legislature sometimes start wrong in Pennsylvania upon great national questions. They started wrong, in my day, on the question of the Bank of the United States, on the question of the Sub-Treasury, and the Wilmot proviso, and it took the people some time to put them right. The

recent Democratic convention which renominated Governor Bigler started wrong, by passing a resolution in favor of the homestead bill; and, by some species of political thimble-rigging, a few members thereof made the convention dodge the question contained in the Nebraska bill. Nay, more, they prevented a majority from passing a resolution in favor of it; for there were a large majority in its favor. If the convention thought proper to express an opinion in regard to one great measure before Congress, it surely should not have been too timid to consider another of equal importance in every point of view. But I feel assured that the distinguished gentleman the convention placed before the people for Governor, will not shrink from a proper support of one of the measures of the Democratic party. He maintained, with great power and ability, the true faith upon the same subject when he was a candidate in 1851, and was successful. It may be policy for public men not to meet fairly, or to withhold an expression of opinion, upon great questions; but I never thought so. I have always acted upon the belief that the course of sound policy was the course of true duty.

There has been considerable *sentiment* worked up throughout the country in favor of this bill; many sentimental and eloquent speeches have been made, but not quite as many as were made in behalf of the Wilmot proviso. The title of the bill, as introduced into the House of Representatives, is a very captivating one. It is called a "*Bill to encourage agriculture, commerce, and manufactures, and ALL OTHER BRANCHES OF INDUSTRY*," &c. It is the same title, I believe, that it has had since *Felix G. McConnell*, a member from the State of Alabama, introduced it in the House of Representatives almost ten years ago. I well recollect the occasion. Since that it was brought conspicuously before the country by Mr. Johnson, now the Governor of Tennessee; but the bill which he advocated did not go so far as this—it only gave land to the landless heads of families; under the present bill a man in Iowa, or any other State, can sell or rent his farm, and take another one hundred and sixty acres he may want in the neighborhood, before the people from Pennsylvania, or any of the old States, could move out. If it is really a meritorious bill, I do not know why it should have such a title.

If it was only intended to catch a popular breeze, I think I could suggest an amendment, so as to make it read "*A bill to encourage agriculture, commerce, and manufactures, and all other branches of industry, to give everybody everything, and to hasten the millenium*." It is certainly a bill of large promises, and, I think, I will be able to show, of little performance. It ought to be called a bill to diminish the value of every acre of land in the old States, and especially in Pennsylvania, and to build up the new States; a bill to throw the expenses of the Land Department upon the customs; to tax the people of the old States to purchase lands to give away to foreigners who have not yet become citizens by complying with our naturalization laws; a bill to discriminate against the mechanic and other persons not acquainted with agricultural pursuits; a bill to destroy the value of land warrants to be granted to the old soldiers.

I stated in my opening that the message under consideration contained sentiments which com-



mitted the President against this bill; and I will now proceed to prove that, to be consistent, he would be obliged to veto it. The President, after quoting a portion of the act of 1847, pledging the proceeds of the sales of the public lands for the redemption of the \$23,000,000 war loan, and saying that it would be a violation of the pledged faith of the Government to grant the lands to the States for the benefit of the insane poor, proceeds to argue as follows:

"I have been unable to discover any distinction, on constitutional grounds, or grounds of expediency, between an appropriation of \$10,000,000 directly from the money in the Treasury, for the object contemplated, and the appropriation of lands presented for my sanction; and yet I cannot doubt that if the bill proposed \$10,000,000 from the Treasury of the United States for the support of the indigent insane in the several States, that the constitutional question involved in the act would have attracted forcibly the attention of Congress.

"I respectfully submit that, in a constitutional point of view, it is wholly immaterial whether the appropriation be in money or in land.

"The public domain is the common property of the Union, just as much as the surplus proceeds of that, and of duties on imports, remaining unexpended in the Treasury. As such, it has been pledged, is now pledged, and may need to be so pledged again, for public indebtedness.

"As property, it is distinguished from actual money chiefly in this respect, that its profitable management sometimes requires that portions of it be appropriated to local objects in the States wherein it may happen to lie, as would be done by any prudent proprietor to enhance the sale value of his private domain.

"All such grants of land are, in fact, a disposal of it for value received, but they afford no precedent or constitutional reason for giving away the public lands. Still less do they give sanction to appropriations for objects which have not been entrusted to the Federal Government and therefore belong exclusively to the States."

It will be perceived that the President distinctly says, that, in a constitutional point of view, there is no difference between money and land. And I add, that I have no more power to give away one hundred and sixty acres of land, without consideration, than I have to give away or go and take \$160 from the public Treasury. But it is said that the President would sign this bill because the alternate sections are retained, and that a prudent proprietor might give away a part, in order to enhance the sale value of the parts retained. And this allegation raises a question of fact: How much, if any, will this bill diminish the receipts from the sale of the public lands? The answer to this question will determine the position of the President. I say it will nearly, if not entirely, destroy the land revenue, and charge \$2,000,000 or \$3,000,000 per annum upon the customs. Is that right? Is that the way a prudent proprietor would act? We now have a communication on our tables from the Postmaster General, asking us to appropriate over \$2,000,000 from the customs to sustain that Department, when the Democratic rule used to be, that the Post Office should sustain itself. So, also, with the Land Department.

A man wishing to build up a city, or a town, might well afford to give away every other lot, provided the purchaser would improve it, but not so with a vast tract of country, useful only for agricultural purposes. The best sections will be taken under this bill, and those adjoining the Government will seldom, if ever, sell. The truth is, the settlers will use them without compensation, under what is called the settlers' law. A man would not want to purchase one without having the consent of the neighbors, and he could not get it. It seems to me that any person who will reflect for

a moment must conclude that the land revenues will be diminished at least three fourths. People will not purchase farming land when they can get it for nothing. They will go a mile or two further in order to get a farm for nothing. Only about two or two and a half millions of acres are required annually for settlement and cultivation.

Mr. President, I know very well that it is sound policy and true duty to dispose of the public land chiefly with a view to settlement and cultivation. I know that we should not make merchandise, without regard to cost, of that which was intended for the use of man. I know that freeholders are the natural and best supporters of a free government. I am in favor of a liberal policy toward those who lead the way in bringing into subjection the wild and unbroken lands of the wilderness. Hence it was that, when I first became a member of this body, I brought forward a bill to graduate and reduce the price of the public lands; and on the 15th of March, 1852, made a speech in its favor, which can be seen in the Congressional Globe. I had two objects in view; first, to give cheap homes to poor settlers, without violating principle; and second, to confront the railroad and other land speculating schemes with a counter proposition. But, in carrying out the policy of making freeholders, is it necessary or proper to violate other maxims of political economy? Is it necessary or proper to collect taxes from all the people, rich and poor, of all the old States, to purchase lands to give away to those who are not poor; for to the really poor this bill affords no relief; they have not the means to build a house and commence farming. Is it according to the requirements of the Constitution to collect money by means of impost duties from the people of all the States, to pay out for the benefit of a few States? The answer to this inquiry is fatal to the argument advanced by the advocates of this bill.

Again: is it proper to create an idea that wealth and prosperity are to be attained, not by industry and economy, but from Government bounties? Is not such an idea fatal to liberty? Was not the days of Roman liberty numbered when the people consented to receive their supplies from the public store houses? Was not the days of the French Republic numbered when Lamartine and others established public workshops? As we now have a surplus of near \$30,000,000 in the Treasury, suppose a member of Congress would bring forward a bill to pay every poor man and woman in the United States above the age of twenty-one years \$160 out of the public Treasury, would that be a "bill to encourage agriculture, commerce, manufactures, and all other branches of industry," or would it be a bill to encourage loafing? And would the cry go up against a man who would oppose such a measure, that he was opposed to the poor; and, as the poor greatly outnumber the rich, would he be voted out of office for opposing such an act of political prostitution? Suppose a candidate for the Presidency in 1856 should declare himself in favor of such a bill, would he succeed against a pure patriot and profound statesman who would refuse to make any such donation? I hope not, although I confess that demagoguism has gone pretty far in this country. There is, however, some republican purity left yet. I believe descendants of the men of 1776,



of the war of 1812, the sons of the old Indian fighters, (who have heretofore been obliged to pay for land if they wanted any,) however poor, would scorn to live either upon the charity of their neighbors, or the bounty of their Government. What is the object of Government? Is it not to give protection to person and property, and to tax the people as little as possible for that purpose?

It is said, however, that the Government is a hard landed proprietor; that it follows and exacts the earnings of the pioneer; that it has no right to prevent the people from entering upon and cultivating land, &c. How is the fact? Suppose the Government had not gone a head of all, put up fortifications, purchased the Indian title, removed the Indians west, had the lands regularly surveyed, and systematically prepared for the use of the settlers, and those who prefer frontier life, would our settlements be half as far west as they now are? Would there not have been a constant scene of border warfare; would there be any certainty in regard to titles? I do not believe, all things considered, that the Government has ever yet received a dollar of net revenue from the public lands. They cost as much, if not more, than we get for them. Since I have been a member of this body, we paid five millions for the extinguishment of the Indian title in Minnesota, besides large sums to extinguish titles in other sections of the country; and treaties, we are informed, have been made for the extinguishment of Indian titles in Nebraska and Kansas.

Has not the Government adopted a liberal policy toward the western States and people? Has it not paid the expenses of territorial governments, and given each State a kind of outfit when it came into the Union. By compact with the new States, upon their admission into the Union, five per cent. of the net proceeds of the sales of the public lands is set apart for the use of such States. Three per cent. is to be annually paid to the respective (new) States, and two per cent. to be used in constructing roads to and through them. Generally the whole five per cent. has been paid to them. Out of this three and two per cent. fund, near five millions have been paid to the new States, independent of what was expended in constructing roads to and through them. We have, too, a liberal preëmption system in force. Besides, over one hundred and twenty-five millions of acres of public lands have been granted to the new States, for the purpose of education, internal improvement, &c., &c., &c. And look, as a consequence of this liberal policy, at the unexampled growth and prosperity of the western and southwestern country. It is unexampled in the history of nations. To no one does this afford more sincere pleasure than to myself. It is a great and glorious spectacle to see the human family thus going out, not lawlessly, but under wise laws, peaceably to possess the earth, and to enjoy its fruits. The new States now possess great political power. They grow, multiply, and prosper, and I presume they will continue to do so until they have the numerical strength to control the Government. And why this desire to build up prematurely the western States and country by Government bounties? Why not let population gradually diffuse itself over the western country? Have not settlements progressed West fast enough? Why this hot-bed system? A natural growth is

always more healthy and enduring than an artificial one. Why offer a premium to the people of the Old World and old States to settle in our western country? May we not want some land fifty or one hundred years hence for our own people gradually to go out upon? May we not want them hereafter, as we have heretofore, to pay our debts, or raise money upon?

Let me now, Mr. President, allude to the practical effect of this bill upon the good old State of Pennsylvania, which I have the honor, in part, to represent. Does it not proceed upon the idea of a redundancy of population and an amount of pauperism there that does not exist? Who will, or who can in that State, accept its provisions? Not the loafers and drinking people about the towns and cities. They are too lazy to work, and too cowardly to steal, and have not the means or the energy to make a settlement on one hundred and sixty acres. If farmers and industrious laboring people, who have got means, accept its provisions, they are obliged to leave the State; and is not the State of Pennsylvania as good a place for this class of people as any other State in the Union? And the more who leave the less valuable our land will be, and the less will be the number left to pay the taxes and do the work. And if they do go West, they will go upon a delusive idea. Before they can get out there the most valuable sections will be taken up. Those living in the new States in the neighborhood know where the most valuable sections are; and when our Pennsylvania people would arrive out, they would find settlers upon the most valuable sections. Our mechanics cannot accept its provisions, because they are unaccustomed to agricultural pursuits, and yet they have helped pay for these lands, and have an interest in them, because they paid their proportion of the taxes by which they were purchased. Have we not large bodies of good uncultivated lands in Pennsylvania? The truth is we have, and the liberal land policy of the General Government west has prevented their sale and settlement for the last fifty years and more. And why should the Federal Government purchase land west to give away, and not in Pennsylvania? Our people have not only paid for their land, but they have agreed to tax themselves to construct railroads and canals over which the western people transport their produce. Will not the best portion of the foreign population, those who have some means, energy, and industry, push on west to accept its provisions, leaving the pauper portion of the emigrants in Pennsylvania and other Atlantic States?

I regard this measure as more objectionable than any of the land schemes which have been brought before Congress. It is more so than the distribution policy, because, although that proposed legislation outside the Constitution, it was for the benefit of all the States. It is inferior to the proposition to cede the public lands to the States in which they lie. That would be a concession to State sovereignty; and while we "disposed" of the land, we would get clear of most of the expenses incident to the land system. One fourth of the expenses of this Government, legislative, executive, and judicial, relate to the public lands. One-fourth of the President's patronage arises under the system. One fourth of the jobbing in and about Washington has reference to it. Hence I feel very much



inclined to favor the bill introduced in the House of Representatives by Mr. Speaker BOYD, and advocated with so much ability by a distinguished Representative from Louisiana [Judge PERKINS.] It proposes to cede the public lands to the States in which they lie, upon certain conditions. One of which is, that the States accepting shall pay seventy-five per cent. of the net proceeds to the General Government. To graduate and reduce the price of the public lands, or to extend the preëmption system would be much more preferable; because, whilst the Constitution and principle would not be violated, cheap homes would be furnished to poor settlers, the receipts from the public lands would approximate the expenses. Several amendments, and one or two substitutes, have been offered to the bill; and when they come up I may have a few further remarks to make, and perhaps one or two amendments to suggest myself.

### THE KANSAS-NEBRASKA BILL.

IN SENATE, May 24, 1854.

The bill providing territorial governments for Kansas and Nebraska, having been returned from the House of Representatives with an amendment, striking out the "Clayton amendment" prohibiting aliens or persons not naturalized from voting:

Mr. BRODHEAD said:

Mr. PRESIDENT: It has been correctly stated by the Senator from Illinois [Mr. DOUGLAS] that this is the same bill which we passed in the Senate sometime since, with the exception of one very important provision, respecting the rights of unnaturalized citizens.

Mr. DOUGLAS. It may be well to state that it contains some verbal alterations in its grammatical construction, but there is no variation in sense with the exception mentioned by the Senator.

Mr. BRODHEAD. The Senator is correct; and as I do not wish to open the debate on the merits of the bill again, I will only consider the section respecting the qualification of voters, which the honorable Senator from Maryland [Mr. PEARCE] has moved to amend by striking out the clause authorizing unnaturalized citizens to vote. The section authorizes all free white persons above the age of twenty-one to vote at the first election, including foreigners who have not become citizens, but have declared their intention to become such, and excluding the officers and soldiers of the Army. So that a foreigner, unacquainted with our language or laws, not twenty-four hours in the Territory, and who has not been in our country ten days, can vote without paying a tax, and General Scott, if he happened to be there commanding our troops, could not. The Senator from Maryland has moved what is called the Clayton amendment, which restricts the right to vote to those who are citizens, either native-born or those who have become such under our naturalization laws; and as I voted for it when the bill was before the Senate upon another occasion, and have seen no reason for changing my vote, I will do so again. The right to vote and take part in the Government is a high privilege, and I hold that it should only be exercised by those who have become citizens and entitled to the rights and immunities, and who have incurred the obligations of citizenship.

I will hereafter state how an alien may become a citizen.

There has been many misrepresentations made respecting the effect of the proposed amendment. It has been said that those who support it desire to disfranchise foreigners, which is not the fact. It has been said that the Clayton amendment was stricken out by the House, in accordance with the example furnished in the bills erecting the Territories of *Utah and New Mexico*, when the truth is, that the Clayton amendment makes it conform to those bills, as I will presently show. And those bills were part of the compromise measures of 1850, and better considered than any others. The amendment now under consideration, is, in my judgment, required by the true spirit and meaning of the Constitution, by sound policy, and justified by precedent.

The Constitution, in the eighth section, says, Congress may "establish a uniform rule of naturalization." Therefore, whenever Congress acts, it must make the rule uniform. Well, Congress has established a rule by an act passed in 1802, requiring five years residence before admission to citizenship, and now it is proposed to establish another rule for Nebraska. And what good reason can be given for it. Why should an alien have greater privileges in Nebraska than in Pennsylvania? I voted to extend the present naturalization laws over the Territory of Nebraska, nothing more. By whom should this Government be carried on—by citizens either native-born or naturalized, or by foreigners? And how does an alien become a citizen in this country? Only under the clause of the Constitution which I have cited and the act of Congress passed in pursuance thereof. And can the right to vote properly appertain to another than a citizen? If foreigners can have and enjoy the rights and privileges of citizens, the highest one of which is to vote, why did our forefathers "establish a uniform rule of naturalization?" and why have so many aliens conformed to it? The section under consideration says, any free white man above the age of twenty-one years (and such is the law in all the States) shall vote, &c. So that we require a native-born person, acquainted with our language, educated in our schools, &c., to be twenty-one years of age before he is thought fit to exercise the high privilege of an elector. Our forefathers wisely thought that foreigners should take five years to become trained in the ways of republicanism, acquainted with our people, our laws, our complex machinery of government, &c., and I concur in opinion with them. This Government can only be maintained by an intelligent exercise of the elective franchise. Hence we have always heretofore confined the right to vote to *free white* persons above the age of twenty-one years, who are native-born, and to aliens who have been in the country five years, and complied with the provisions of our naturalization laws. Our views of constitutional liberty differ very much from European notions of liberty.

It may be profitable, Mr. President, to examine the action of Congress under the clause of the Constitution requiring an "uniform rule of naturalization." In 1789 the Government went into operation under the present Constitution, and on the 26th of March, 1790, the first naturalization law was passed, requiring two years' residence, one year in the State where the application is



made, oath to support the Constitution, &c. Toward the close of Washington's administration, on the 29th of January, 1795, an act was passed requiring five years' residence, three years' declaration of intention, oath, and proof of good moral character, &c. In 1797, the old Adams party came into power, and on the 18th of June, 1798, an act was passed requiring fourteen years' residence, five years in the State in which the application is made, oath, and proof of good moral character, &c. In 1801, the Jeffersonian Democratic party came into power, and on the 14th of April, 1802, passed an act requiring five years' residence, declaration of intention two years' renunciation of allegiance to any foreign Prince, &c., oath to support the Constitution, proof of good moral character, &c. This law has now been in force for more than fifty years. It was intended to be a liberal one, for the country was then almost a wilderness. It was satisfactory to the alien at that time, and should be so now. Any attempt to modify it, or to denounce those who are willing to stand by it, on the part of the emigrants, will create a counter sentiment, highly injurious to them. The statistics of emigration show that up to 1840, only one million of emigrants have arrived in the country; now we receive annually, near four hundred thousand. During the next three years, we will receive as many as we did for thirty-five years prior to 1840. I have no feeling of hostility to them. I want them to come here and enjoy religious and political freedom, protection to person and property, and in due season to become citizens and take part in the government; to vote and to hold office. Any man who pretends anything more for them is not their true friend. The wise portion of them do not wish any thing more themselves. Up to the present time foreigners came here to be Americanized, not to un-Americanize us. But, I confess I have witnessed some recent demonstrations that do not please me. The movements of Kossuth in this country did him no credit, and since he returned, he has issued an address to the German people of this country to take action against the Senate of the United States for rejecting a gentleman nominated by the President for consul at London. German meetings have been held in different parts of the United States to denounce those who support this bill; and I believe they went so far, in some places, as to burn the honorable and distinguished Senator from Illinois in effigy. But, sir, I do not hold the great mass of them responsible for these acts. The honest and industrious German does not wish to meddle unseasonably in politics, nor does the generous and warm-hearted Irishman whose heart beats responsive to the bold anthem of "Erin-go-braugh." Those who set themselves up for leaders among them, who claim to be the special guardians of their rights, who pretend to have the same religion that they have, that they may sell them out in election times, either for money or office, are their worst enemies. I have seen a good many claim office on the allegation that they influenced this or that portion of the alien vote, and threaten those in power with the displeasure of the voters of foreign birth if they were not gratified. Did we not see General Scott, the gallant old chief, who fought during the war of 1812 upon our northern frontier, and who had carried the stars

and stripes of our country in triumph to the halls of the Montezumas, talking during the last presidential canvass about the "rich Irish brogue, and the sweet German accent." It was a humiliating spectacle. For my part, sir, I do not wish to see our candidates making appeals either to or against any portion of our emigrant population. I wish them to feel as American citizens, and act as such at the proper time. But when they hold separate meetings, why, of course, they induce native-born American citizens to hold meetings and organize against them.

Mr. President, I think I have pretty clearly shown that the spirit of the Constitution, and sound policy, require aliens to become citizens under the clause of the Constitution I have referred to, and the act of Congress passed in pursuance thereof, before claiming the right to vote. Our own people, moving from one State to another, cannot vote in the State into which they move until they have resided therein for some time, and paid tax. In most of the States it is two years; in some one year, and in a few six months. Some time is supposed to be necessary to enable them to become acquainted with the laws and the people among whom they reside. I will now proceed to show that the section, as it comes to us from the House, is a departure from previous legislation.

The celebrated Ordinance of 1787, organizing the Northwestern Territory, prior to the adoption of the Constitution, contained this provision. The Southwestern Territory was afterwards organized with a similar provision:

"*Provided*, That no person be eligible or qualified to act as a representative unless he shall have been a *citizen of one of the United States* three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: *Provided, also*, That a freehold in fifty acres of land in the district, *having been a citizen of one of the States*, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative."

In 1808 Congress passed the act alluded to by the Senator from Maryland. It not only required citizenship, but a certain amount of property. It reads as follows:

"That every free white male person in the Mississippi Territory, above the age of twenty one years, having been a *citizen of the United States*, and resident in the said Territory, one year next preceding an election of representatives, and who has a legal or equitable title to a tract of land, by virtue of any act of Congress, or who may become the purchaser of any tract of land from the United States of the quantity of fifty acres, or who may hold in his own right, a town lot of the value of \$100 within the said Territory, shall be entitled to vote for representatives to the General Assembly of said Territory."

In 1819 Congress authorized the people of the Territory of Michigan to elect a Delegate to Congress, and then a slight departure took place, but still not so great as is now proposed. A residence of one year, and the payment of a tax, was required to qualify an inhabitant of the Territory to vote. The section under consideration neither requires prior residence, payment of tax, nor evidence of intention to remain in the Territory, or naturalization. The following is the law to which I refer:

"SEC. 2. *And be it further enacted*, That every free white male citizen of said Territory, above the age of twenty-one years, who shall have resided therein *one year* next preceding an election, and who shall have paid a *county or territorial tax*, shall be entitled to vote at such



election for a Delegate to the Congress of the United States, in such manner, and at such times and places, as shall be prescribed by the Governor and judges of said Territory."

In 1838 Congress organized the Territory of Wisconsin, and in 1838 the Territory of Iowa. The territorial law passed for Iowa is in the same language as that contained in the Wisconsin bill. The fifth section of both contains a significant proviso:

"SEC. 5. *And be it further enacted*, That every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters at all subsequent elections shall be such as shall be determined by the Legislative Assembly: *Provided, That the right of suffrage shall be exercised only by citizens of the United States.*"

In 1848 the Territory of Oregon was organized, and then a still greater departure took place; but still the law required a residence in the Territory at the time of the passage of the act, and in this respect it differs from the legislation now proposed.

Then, sir, we come to the legislation contained in the compromise measures of 1850. There has been a great misrepresentation in regard to the legislation upon this subject in the two bills organizing the Territories of Utah and New Mexico. It has been represented, over and over again, that both of these Territories have been organized in such a manner as to give the inhabitants, whether native-born, naturalized, or unnaturalized, the right to vote. It is not so. The bill organizing the Territory of New Mexico was approved on the 9th of September, 1850; the Utah bill was approved the same day. This provision is contained in both:

"SEC. 6. *And be it further enacted*, That every free white male inhabitant, above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided, That the right of suffrage, and of holding office, shall be exercised only by citizens of the United States, including those recognized as citizens by the treaty with the Republic of Mexico, concluded February 2, 1848.*"

I am justified, therefore, in saying that the proposed legislation is not only contrary to the provisions and spirit of the Constitution, and to sound policy, but it is contrary to the weight of precedent upon the subject. I believe we have organized eighteen Territories, and in a majority of them the right to vote is confined to citizens of the United States. In 1838, on the question of the admission of Michigan as a State, Mr. Calhoun and Mr. Clay both contended, especially Mr. Calhoun, that even a State could not be admitted into the Union whose constitution authorized unnaturalized aliens to vote. There seemed to be no doubt in the mind of either that unnatu-

ralized persons should not be permitted to vote in the Territories.

What do we propose to do now? It is proposed to pay millions for this territory to extinguish the Indian title. We paid five millions to extinguish the Indian title in Minnesota. We propose now to pay millions to extinguish the Indian title in Nebraska and Kansas; and we are asked to turn over the government of both Territories into the hands of foreigners, and thus permit them to lay the foundation of two States. And we are also asked by the advocates of the homestead bill to give each one a farm besides.

Mr. President, in view of what has taken place upon this Nebraska and Kansas bill, well disposed persons may well inquire whether Congress is capable of legislating on any subject where slavery and the rights of aliens may be called in question. There seems to me to be a quailing before the spirit of Abolitionism and a foreign influence, which may well suggest the inquiry to which I have just alluded. The excitement about slavery in the Nebraska country shows that nations, as well as individuals, are more troubled about imaginary than real evils. I have been denounced all over my own State by the open or secret enemies of this bill, or by those whose malice against me has long had the upper hand of their sense of justice, as voting to disfranchise aliens, and as being the only Senator from a free State who voted for the Clayton amendment. Well, sir, it is true that I am the only Senator from a free State who voted for it—and what of it? A majority of my brother Senators voted for it, and a majority of the Democrats of this body. The Free-Soil, or Abolition Senators, as they are called, of course, voted against it. I voted with the distinguished Senators from Virginia.

Mr. HAMLIN. Will they vote with you now?

Mr. BROADHEAD. I do not know whether they will or not. I do not ask who is going to vote with me or against me. I inquire whether it is right, as I did when the Wilmot proviso was first presented. I stood almost single-handed and alone against that. I do not care who votes with me on this amendment. It is right. It is right and just to the aliens themselves. It is for the purpose of maintaining the Constitution and the rights of American citizens, and I will vote for it, be the consequences to myself what they may. I know that my course may be misrepresented before the alien voters, and that I may thus incur their displeasure; but I will do my duty, and incur the hazard. When the amendment was first proposed by the honorable Senator from Delaware, it was late at night. I was acting as the Presiding Officer, and could not give the reasons by which I was influenced. I have endeavored to do so now, and respectfully submit them to the consideration of the Senate, and those I have the honor to represent on this floor.